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VOLUNTARY INDEMNITY FOR INJURED WORKMEN

F. C. SCHWEDTMAN

Let me preface my remarks with an apology to you and to the great subject upon which I am to speak. A month ago your worthy Secretary advised me that I was to have fifteen minutes for a discussion of my subject. I told him that no one could do the subject justice in that length of time, whereupon he extended my time allowance. I promised faithfully to speak not a second longer than twenty-five minutes, and I am in the habit of living up to my promises. My time is just long enough to discuss and illustrate a few fundamental principles. I cannot possibly convey to you more than twenty-five per cent of what I should like to say, and what I ought to say in justice to the subject assigned to me for discussion.

My subject is "Voluntary Indemnity for Injured Workmen." Let me begin my argument with the startling statement that in my opinion *voluntary* indemnity alone will never settle the problem of providing equitable compensation for the incapacitated members of our industrial army. But let me add to this statement that I feel equally sure that compulsory action *alone* will never settle the problem.

Only by compulsion can the reactionary member of society be made to do his share of the common duty. Only by voluntary action will the patriotic progressive individual do the best that is in him or her. Only by compulsory legislation can a national system be established which will provide the necessary regulations for prevention of accidents and minimum relief for disabled workers or their dependents. Only by *permissive* legislation and voluntary action can the best individual effort be encouraged and the maximum benefits secured.

I need hardly say that when I speak of "progressives", "reactionaries", fair and unfair, I speak of all the nation and not of a class. I speak of legislators and lawyers, employers and wage workers, insurance men and doctors. We are wasting time when we seek to blame one set or class of people for the shortcomings of our present scheme. The large majority of all people is fair-minded and wants to do the right thing. I could show you tonight systems of relief in some of our members' shops, which are fully

as liberal in dealing with their injured, sick, or superannuated workers as the very best European examples; and in several cases such systems cover establishments with five to twenty-five thousand employees. It is the system, and not the men, that should be criticised.

In order to improve our present system and change it to a point which is in keeping with our great country, our institutions and our people, we need the patient and hearty coöperation of the good people of all classes. This is not the time and place to enter into a discussion of employers' liability laws or systems. The question is no longer, "Should we establish an accident compensation system?" The question is, "What should be the basis and principles of our future compensation system?" The National Association of Manufacturers, which I have the honor of representing, has put itself officially on record as disfavoring any kind of employers' liability scheme, because such schemes are "unsatisfactory, wasteful, slow in operation, and antagonistic to harmonious relations between employers and wage workers." In place of such a system the National Association of Manufacturers recommended, at its last annual meeting, an "equitable, voluntary, mutually contributory indemnity system, automatically providing relief for victims of industrial accidents and their dependents." Special stress is placed, officially, upon *accident* prevention and its greater importance even than compensation.

Since this official declaration was adopted, a four months' inquiry into European systems has been completed by Mr. Emery, our legal counsel, and myself, and our report has been placed before the officers of the National Association of Manufacturers and a large body of fine men, who, as members of a special advisory board, are giving us the benefit of their judgment and experience.

I shall read some extracts from our latest findings. But before proceeding to do this, let me assure you that our European investigation was not conducted with the expectation of adopting, as a whole, the system of any one of the European countries. We shall never Anglicize, Germanize, or Gallicize our institutions nor our people. We can, however, greatly profit by foreign experience with a common problem. The world owes a debt to those nations which, with prudent boldness, have deliberately undertaken vast social experiments for the benefit of their people. It is not only our privilege, it is our duty, to benefit by the experience of such

nations. And now for the findings of our Committee. Our Committee finds:

I

That limited compensation for personal injury received in the course of employment is assured in substantially all European countries; that it rests upon the acknowledgement as a basic fact that injury by accident in employment arises not only from negligence, but from the risk inherent in the use of modern implements of production; that the economic effect of the increasing percentage of unavoidable accidents should primarily rest upon the employments in which they are incurred, and not upon the individual who receives them, through a system of compensation which, providing him and those dependent upon him with substantial relief, likewise operates to minimize preventable accidents by every precaution—the pecuniary burden of the system thus passing as part of the cost of production to society, for whose ultimate benefit it has occurred. The fault ceases to be the basis of recovery, except where it jeopardizes the safety of fellow employees, or assumes the form of wilful self-injury or criminal negligence. This principle is and should be applied to *all* employments, save in exceptional instances where difficulties of application merely defer its extension.

That all countries adopting the compensatory principle are not equally successful in applying it, but the better results of European experience demonstrate that the principle is socially beneficial, economically expedient, and industrially advantageous, and if applied in conformity with our form of government, mode of thought, and condition of labor, would confer undoubted benefits.

II

That the advantages perceived in the compensation system were secured and are maintained only in accompaniment with a sound, vigorous, and scientific system of accident prevention, stimulated by public and private coöperation, with suitable provision in all cases of personal injury for prompt and efficient first aid medical treatment.

III

That the compensatory system has been successfully applied in Europe only when based upon the careful investigation of trained minds, predicting their conclusions upon ascertained facts. We believe intelligent legislation must be based upon deliberate in-

vestigations and accurate information, and that the success of any scheme is inseparably associated with the scientific system of accident statistics and investigation of accident causes.

IV

We find in all European states compensatory legislation is intended to exclude, or purposely endeavors to discourage or retard, the use of preëxisting remedies for recovery in action based upon personal injury. We find that a single liability is essential to satisfactory operation of the compensatory principle, and its adoption should be accompanied by the repeal, so far as possible, of all other remedies within the limit of its application.

V

We find as an essential feature of all European systems, provision for rapid, cheap, and impartial adjustment of compensation claims by tribunals of arbitration whose judgment is final on questions of fact and subject to one or more appeals on questions of law.

VI

Compensation must be assured or it becomes an empty right and useless remedy. If it is dependent upon the solvency of the employer, the position of the employee of the small employer is not improved. Insurance alone assures solvency and guarantees recovery to the workman and lessens the burden of the employer. Provision should, therefore, be made whereby every employer of labor shall satisfy the proper state authorities that the payment of the prescribed compensation is assured to his employees through either one of the following methods:

1. By the employer's own financial liability, or
2. By an accident insurance department organized and maintained by the state, or
3. By insurance in private liability insurance companies, duly approved by the state, or
4. By insurance in mutual insurance associations duly approved by the state.

Assurance under any one of the last three plans must operate to relieve the employer from personal liability. The closer the connection and coöperation between shop management, insurance management, and accident prevention activities, and the closer the insurance rates are based upon the individual accident prevention effort of a shop, the better and more efficient the system will be.

VII

We find in the complete statistical record of the German Empire covering a period of twenty-five years and sustained by the less complete returns of other European countries and the relative rates of private insurance, that we must readjust our conventional notions of the comparative hazard of various employments. European and Canadian evidence indicates a high percentage of accidents in agricultural as well as in industrial pursuits. If, therefore, any one employer becomes an insurer against accidents in employment, all employers should bear the same burden in proportion to the actual hazard of their particular pursuits. We find that the application of the principle of compensation should be universal or it places unequal and arbitrary burdens upon classes of employers and denies participation in the benefits of its remedial provisions to vast classes of wage workers.

VIII

We believe those systems most equitable and effective which require contribution from employer, wage worker, and possibly the state. A system cannot be effective in preventing accidents or in discouragement of fraudulent claims which does not secure the fullest coöperation of employer, employee, and state; and no system can be just or in keeping with the American spirit of securing benefits in proportion to individual effort which does not place the burden of making compensation for accidents jointly upon those responsible for their occurrence.

IX

We feel called upon to emphasize that any application of the compensatory principle in our country requires assurance of substantially uniform legislation by the states of the Union. The establishment of a variety of systems differing in form and substance and creating new liabilities, varying in nature and degree, would produce conditions too obviously harmful to require amplification.

X

We are conscious that the introduction of principles implying systematic compensation of accident into our form of government bristles with legal difficulties. We here are not concerned with their consideration or discussion; we are primarily interested in the selection of a sound policy. The nature and extent of desirable change is to be ascertained before the method of its

execution becomes the primary concern. We believe, however, that the encouragement of voluntary action by employers has not received sufficient public consideration. While our legislatures deliberate over their powers of compulsion, they might also with profit give full consideration to their opportunities for persuasion. The voluntary adoption of equitable schemes can be expedited by lessening the liability of employers who guarantee just compensation, as well as by threatening the legal defenses of employers who do not.

The basis for our conclusions we shall be able to place before members of the American Association for Labor Legislation at an early date in the form of charts, diagrams, and figures. They are compiled from an investigation of the subject among 20,000 American manufacturers and after a four months' study of European conditions.

The short time at my disposal does not permit such a lengthy and thorough discussion of the whole subject as I should like to indulge in, but in conclusion I want to impress upon you the advisability of your coöperation with progressive employers' associations. It requires the best efforts of all patriotic men and women interested in this question to settle it equitably and promptly. The scientific man alone can accomplish little; the same holds good of the legislator, the lawyer, the wage-worker, and the employer; but coöperation between all of these forces will result in the early adoption in all the states of the Union of a system which is reasonably free from all the defects of European systems, and which at the same time embodies the best points of all of them. You will find the National Association of Manufacturers in the front rank of the forces working constructively for an equitable compensation system for injured workers. We shall work with you if we can, without you if we must.